



IT IS ORDERED

Date Entered on Docket: April 23, 2018

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

RUFUS WAYNE WIMBERLY
DRUCILLA MARY WIMBERLY

Case No. 7-17-12843-JA

Debtors.

**DEFAULT ORDER GRANTING SUNTRUST MORTGAGE, INC. RELIEF FROM
AUTOMATIC STAY AND ABANDONMENT OF PROPERTY TO SUNTRUST MORTGAGE,
INC. LOCATED AT 9712 GOLF COURSE RD NW ALBUQUERQUE, NEW MEXICO 87114**

This matter came before the Court on the Motion for Relief from Automatic Stay and for the Abandonment of Property to Suntrust Mortgage, Inc., filed on March 15, 2018, (DOC 26) (the “Motion”) by Suntrust Mortgage, Inc. (“Suntrust”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On March 15, 2018, Suntrust served the Motion and a notice of the Motion (the “Notice”) on Mark Daniel John Regazzi, Attorney for Debtors and Yvette J. Gonzales, Trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtors Rufus Wayne

Wimberly and Drucilla Mary Wimberly, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the property located at 9712 Golf Course Rd NW Albuquerque, New Mexico 87114, more fully described as:

Lot numbered Three (3) in Block numbered Forty-four (44) Plat of Unit One (1) of the Knolls of Paradise Hills, a Subdivision within the Town of Alameda Grant, Bernalillo County, New Mexico, as the same is shown and designated on the Plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on May 22, 1962, in Map Book D3, folio 31.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the “Property”). If there is a conflict between the legal description and the street address, the legal description shall control.

(c) The Notice was amended on March 16, 2018 to correct the court address and provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on April 10, 2018;

(f) As of April 16, 2018, neither the Debtor nor the Trustee, nor any other party in interest, filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein; and

(h) By submitting this Order to the Court for entry, the undersigned counsel for Suntrust certifies under penalty of perjury that, on the date this Order was presented Rose L. Brand & Associates, P.C. searched the data banks of the Department of Defense Manpower Data Center (“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Suntrust and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce its rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtors are parties, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtors or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to it under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Suntrust need not name the Trustee as a defendant in any state court action it may pursue to foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtors, in the event that a discharge order is entered. The Debtors can be named as a defendants in litigation to obtain judgment or to repossess the Property in accordance with applicable non-bankruptcy law, pursuant to any discharge order entered.

4. This Order does not waive Suntrust's claim against the estate for any deficiency owed by the Debtors after any foreclosure sale or other disposition of the Property. Suntrust may file an amended proof of claim in this bankruptcy case within thirty (30) days after a foreclosure sale of the Property, should it claim that Debtors owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. Suntrust is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with the Debtors and to enter into a loan modification with the Debtors.

XXX END OF ORDER XXX

RESPECTFULLY SUBMITTED:

ROSE L. BRAND & ASSOCIATES, P.C.

By: /s/Andrew P. Yarrington

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